

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH DAVID WEST and ROBERT
TAYLOR, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT
Case No.



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1 Plaintiffs allege the following on personal knowledge with respect to themselves and
2 their acts, and on information and belief with respect to all other matters based on the
3 investigation made by their attorneys.

4 I. INTRODUCTION

5 1. Amazon.com, Inc. (“Amazon”) operates the largest online retail platform in the
6 United States, which includes its website, applications for mobile devices, and voice-controlled
7 devices (“Amazon’s platform”). Sales on Amazon’s platform make up between 50% and 70%
8 of all online retail sales in the United States. By comparison, the shares of Amazon’s nine
9 closest competitors range from 1.1% to 6.6% of that market.

10 2. Amazon operates as a retailer by selling directly to its customers. In this role,
11 Amazon sells approximately 12 million products on its platform, encompassing a wide range of
12 consumer goods.

13 3. Amazon has also designed its platform to be a marketplace where Amazon
14 customers can buy products from other retailers (“third-party merchants”). Third-party
15 merchants may register with Amazon Marketplace for consumers to buy their products on
16 Amazon’s platform. When an Amazon customer buys an item listed by a third-party merchant,
17 Amazon collects a fee for the use of its platform, which it deducts from the purchase price
18 before remitting the remainder to the third-party merchant. Amazon therefore competes both
19 with other online retail sales platforms, such as eBay, Walmart, and Wayfair, for the business of
20 third-party merchants, and with third-party merchants who list their products on Amazon’s
21 platform.

22 4. The overwhelming majority of third-party merchants selling on Amazon’s
23 platform also sell on competing platforms, including their own websites and the platforms
24 offered by companies like eBay, Walmart, and Wayfair. Amazon imposes significant fees for
25 the use of its platform, including a subscription fee and percentage fees on the sale of each
26 product (commissions that it calls “referral fees”). Amazon’s total fees are substantially higher
27 than the fees charged by other platforms, especially platforms with no fees at all, such as the
28

third-party merchants' own websites. Third-party merchants incorporate Amazon's fees into their pricing on Amazon's platform. In a competitive market, third-party merchants would charge a total price on other platforms that is lower than the price charged on Amazon's platform, because the other platforms take a lower fee. However, Amazon uses its market power to prohibit this form of price competition.

5. Every third-party merchant that registers to sell products on Amazon's platform "agrees to the terms of the Amazon Services Business Solutions Agreement (BSA) and the policies incorporated in that agreement."¹ The BSA establishes rules for setting prices on Amazon's platform.

6. Before March 2019, Amazon required its third-party merchants to agree to Amazon's "Price Parity Clause." The Price Parity Clause (also known as a "Most Favored Nations" clause or "MFN" clause) explicitly prohibited third-party merchants from offering consumers lower prices on any alternative online platform, including their own websites. An investigation by the Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the Judiciary found that "Amazon has a history of using MFN clauses to ensure that none of its suppliers or third-party merchants can collaborate with an existing or potential competitor to make lower-priced or innovative product offerings available to consumers."²

7. Amazon's Price Parity Clause restricted and suppressed price competition in two ways.

8. *First*, the Price Parity Clause prohibited third-party merchants from lowering their prices on other online retail sales platforms. But for Amazon's MFN clause, Amazon's

¹ Declaration of Ella Irwin, Director of Marketplace Abuse at Amazon (Jul. 13, 2018), *Kangaroo Mfg., Inc. v. Amazon.com*, Case No. 17-cv-1806SPL (D. Ariz.), Dkt. No. 75 ("Irwin Decl."), ¶ 4. Amazon also has a limited number of stand-alone agreements with certain third-party merchants, who are not subject to the Standard Business Agreement. For example, Amazon has a separate agreement with certain publishers to sell their eBooks directly to customers on Amazon's platform. See Laura Owen, *Macmillan, too, returns to agency pricing with Amazon*, Gigaom (Dec. 18, 2014), <https://gigaom.com/2014/12/18/macmillan-too-returns-to-agency-pricing-with-amazon/>. Amazon's anticompetitive agreements with these eBooks publishers is the subject of a separate class action. See *Fremgen v. Amazon.com, Inc.*, Case No. 1:21-cv-351-GHW-DCF (S.D.N.Y. filed January 14, 2021).

² Investigation of Competition in Digital Markets, Majority Staff Report and Recommendations ("House Report"), Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the Judiciary (Oct. 6, 2020), available at <https://kl.link/3jGISfK>.

1 higher fees would result in consumers paying a higher overall price on Amazon's platform than
 2 on competing platforms. Competitive pressure would then have forced Amazon to lower its
 3 fees. By eliminating price competition across platforms, Amazon protected its ability to charge
 4 supracompetitive fees for the use of its platform, keeping prices high on its platform and,
 5 therefore, across all online retail sales platforms.

6 9. *Second*, Amazon eliminated horizontal price competition between its own goods
 7 and the directly competing goods of the third-party merchants that would otherwise have been
 8 sold at lower prices, not only on competing online platforms and the merchants' websites, but
 9 also on Amazon's platform. Without the Price Parity Clause, Amazon would have had to offer
 10 lower prices for its own goods to compete with the lower-priced third-party-merchant goods.

11 10. In both cases, the anticompetitive contractual obligations that Amazon imposed
 12 on the third-party merchants increased the prices paid by Amazon customers for goods
 13 purchased on its platform. Those contractual restraints resulted in supracompetitive prices being
 14 charged on Amazon's platform for the goods of both third-party merchants and Amazon—
 15 prices that could not have been sustained in the absence of anticompetitive contracts.

16 11. Multiple regulators have recognized the anticompetitive nature of Amazon's
 17 MFN clause. In 2012, regulators in the U.K. and in Germany³ concurrently investigated the
 18 anticompetitive effect of Amazon's MFN clause in the U.K. and German online retail sales
 19 markets.⁴ Concerned that Amazon's MFN clause could drive up online prices for consumers, the
 20 U.K. regulators opened a formal investigation after receiving "numerous complaints" that
 21 Amazon prohibited third-party merchants from selling their products at lower prices through
 22 other online platforms, including the merchants' own websites.⁵ Considering the "national
 23 market" for online retail sale platforms, the German regulators found that Amazon's MFN

24 ³ Specifically, the regulators were the U.K. Office of Fair Trading and regulators in Germany's Federal Cartel
 25 Office, the Bundeskartellamt.

26 ⁴ Dan Prochilo, UK May Drop Antitrust Probe into Amazon Pricing Policy, Law360(Aug. 29, 2013),
<https://www.law360.com/articles/468842/uk-may-drop-antitrust-probe-into-amazon-pricing-policy>. OFT closed in
 27 2014 and was succeeded by the newly created Competition and Markets Authority.

28 ⁵ *Id.*

1 clause amounted to a “horizontal price-fixing” agreement that acts as a “barrier[] to market
 2 entry for new competitors and hinder[s] the expansion of existing competitors in the market.”⁶
 3 They further found that the MFN is “a hardcore restriction in that it limits price-setting
 4 behaviour, [which] cannot be seen either as an indispensable restriction, or as an appropriate
 5 way of involving consumers with regard to its price-raising effect.”⁷ In short, they concluded
 6 that the MFN clause has anticompetitive effects with respect to both third-party merchants and
 7 other retail sales platforms because it “results in safeguarding Amazon’s large own-account
 8 share of sales as a competitor and the extensive reach of amazon.de, which cannot be attacked
 9 by competing platforms.”⁸

10 12. Amazon continued to employ its MFN clause in the United States until March
 11 2019. Under threat of a Federal Trade Commission (FTC) investigation, Amazon also officially
 12 withdrew its MFN clause in the United States.

13 13. But the withdrawal was merely sleight of hand. Amazon continues to enforce its
 14 price restraint under its so-called “Fair Pricing Policy.” The new policy states that, if a third-
 15 party merchant engages in pricing practices with regard to “a marketplace offer that harms
 16 customer trust,” Amazon may impose sanctions. According to Amazon, a third-party merchant
 17 commits a “pricing practice that harms consumer trust” if it sets a price for its goods on a
 18 competing online retail sales platform that is significantly below the price charged for the goods
 19 on Amazon’s platform.

20 14. The sanctions imposed on third-party merchants for charging consumers a lower
 21 price on a competing platform are severe: They include eliminating a product’s “Buy Box”
 22 button, which is a feature that makes a product the most visible on the product-detail page and
 23 the easiest for consumers to purchase; removing the third-party merchant’s offering from the
 24 Amazon Platform; suspending shipping options; and terminating or suspending the third-party
 25 merchant’s ability to have any goods sold on Amazon’s platform.

26 ⁶ 12.09.13 Bundeskartellamt Decision at 3.

27 ⁷ *Id.*

28 ⁸ *Id.*

1 15. Amazon uses the sanctions under its Fair Pricing Policy “as a way to penalize
2 sellers that offer products at a lower price on competing sites.” House Report at 296. For
3 example, the suspension of a third-party merchant’s account has “dire consequences for the
4 seller” and was cited by the Congressional Investigation as an “egregious example” of
5 Amazon’s bullying of third-party merchants. *Id.* And the elimination of the “Buy Box” button
6 from the third-party merchant’s listing is devastating to the merchant’s business because 80% of
7 the purchases on Amazon’s platform are made with the “Buy Box.”

8 16. Third-party merchants cannot afford to avoid the onerous conditions of
9 Amazon’s Fair Pricing Policy because Amazon has massive and durable market power.
10 Amazon’s “market power is at its height in its dealings with third-party merchants.” House
11 Report at 15. As a result of Amazon’s market power, third-party merchants are “forced to be on
12 Amazon” and believe they “don’t have a choice but to sell through Amazon.” House Report at
13 87, 270.

14 17. Amazon regularly and aggressively monitors the prices offered by its third-party
15 merchants on other online platforms, routinely using computer software to scan the price listings
16 of its third-party merchants on competing online websites. This is done to determine whether its
17 third-party merchants are violating its euphemistically named “Fair Pricing Policy.”

18 18. The intent and effect of the Fair Pricing Policy is the same as the former Price
19 Parity Clause. Under both policies, Amazon uses its market power to prevent third-party
20 merchants from selling their products at lower prices on other online platforms. This, in turn,
21 allows Amazon both to charge higher fees for the use of its platform and to charge higher prices
22 for the Amazon products it sells on its platform.

23 19. Ultimately it is consumers who suffer harm by paying higher prices (1) for
24 products purchased from third-party merchants through online retail sales platforms other than
25 Amazon’s platform,⁹ (2) for products purchased from third-party merchants on Amazon’s
26 platform, and (3) for purchases of Amazon’s own products.

27 ⁹ See *Frame-Wilson v. Amazon*, Case No. 2:20-CV-00424-RAJ (W.D. Wash) (filed March 19, 2020).

II. JURISDICTION

20. This Court has subject matter jurisdiction over Plaintiffs' Sherman Act and Clayton Antitrust Act claims because they arise under federal law. *See* 28 U.S.C. §§ 1331, 1337; 15 U.S.C. §§ 1, 2, 15(a).

21. Plaintiffs are residents of Illinois and Connecticut. As described in this Complaint, Plaintiffs purchased consumer goods online through Amazon's platform and suffered financial harm because of Amazon's anticompetitive conduct.

22. This Court has personal jurisdiction over Amazon because Amazon has its principal headquarters in Washington, does business in Washington, and has registered with the Washington Secretary of State.

III. VENUE

23. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) because Amazon's principal place of business is in this judicial district, and a substantial part of the events giving rise to the claims occurred in this judicial district.

IV. PARTIES

A. Plaintiffs

24. Kenneth David West is a resident of Mount Prospect, Illinois. He has regularly shopped on Amazon's platform, starting as early as 2006. For example, he made the following purchases on Amazon's platform: on August 27, 2019, he purchased for \$79.99 a HelloBaby video baby monitor with camera and audio B07MZ1J93Y, which was listed by Amazon's co-conspirator, third-party merchant Jing Rui Mei; on March 20, 2020, he purchased for \$27.90 an amplified HD digital TV antenna, which was listed by Amazon's co-conspirator, third-party merchant Abask Tech; on November 2, 2020, he purchased for \$33.94 an LG basket assembly part B00NAP58ZE, which was listed by Amazon's co-conspirator, third-party merchant Part Supply House; on April 13, 2021, he purchased for \$199.99 a Hunter sonic indoor ceiling fan B00FGM503O, which was listed by Amazon itself; and on December 8, 2020, he purchased for \$249.99 a Little Tikes indoor/outdoor inflatable bouncer B08CXDCLD2, which was also listed

1 by Amazon itself. Mr. West has been injured and will continue to be injured by paying more for
 2 products than he would have paid or would otherwise pay in the future in the absence of
 3 Amazon's unlawful acts, as set forth herein.

4 25. Robert Taylor is a resident of New London, Connecticut. He regularly buys goods
 5 on Amazon's platform. For example, he made the following purchases on Amazon's platform:
 6 on December 30, 2017, he purchased for \$589 a Rado Coupole men's quartz watch R22625113,
 7 which was listed by Amazon's co-conspirator, third-party merchant Imperial 123; on January 3,
 8 2018, he purchased for \$950 a Rado Coupole men's watch R22531723, which was listed by
 9 Amazon's co-conspirator, third-party merchant Promenadewatches; on June 20, 2019, he
 10 purchased for \$919.09 Dolce e Gabbana men's black leather sneakers CS1570AZ388HNF57,
 11 which was listed by Amazon's co-conspirator, third-party merchant Dolce e Gabbana; on May
 12 13, 2020, he purchased for \$688.99 a Rado men's Centrix diamond Swiss quartz watch, which
 13 was listed by Amazon's co-conspirator, third-party merchant Global Precious Brands, LLC; on
 14 April 8, 2019, he purchased for \$39.99 a CLI-281 black, cyan, magenta and yellow 4 ink pack,
 15 which was listed by Amazon itself. Mr. Taylor has been injured and will continue to be injured
 16 by paying more for products than he would have paid or would otherwise pay in the future in the
 17 absence of Amazon's unlawful acts, as set forth herein.

18 **B. Defendant**

19 26. Amazon is an online retail giant with its principal headquarters in Seattle,
 20 Washington. Amazon sells its own products directly to retail customers. Amazon also allows
 21 third-party merchants to sell products on its online retail sales platform.

22 **V. STATEMENT OF FACTS**

23 **A. Amazon Operates the Dominant Online Retail Sales Platform and Dominates the** 24 **Online Retail Sales Market in The United States.**

25 27. Amazon operates the largest online retail sales platform in the United States. As
 26 the name implies, an online retail sales platform is a combination of websites and mobile
 27 applications that allow consumers to find and purchase products offered online by retailers.
 28

1 Sales on Amazon's platform make up between 50% and 70% of all online retail sales in the
2 United States.

3 28. Amazon operates as a retailer on its own platform by selling directly to its
4 customers. In this role, Amazon sells approximately 12 million products on its platform,
5 encompassing a wide range of consumer goods.

6 29. But Amazon has also designed its platform to be a marketplace where Amazon
7 customers can buy products from other retailers ("third-party merchants"). Third-party
8 merchants may register with Amazon Marketplace to sell products on Amazon's platform.
9 Amazon therefore competes both with other online retail sales platforms—such as eBay,
10 Walmart, and Wayfair—for the business of third-party merchants, and with third-party
11 merchants who sell their products on Amazon's platform.

12 30. A third-party merchant's relationship with Amazon begins with a \$40
13 registration fee that allows it to reach 95 million unique visitors per month in the United
14 States.¹⁰ But third-party merchants "have to play by Amazon's rules, and Amazon.com isn't just
15 a marketplace, it's also a seller."¹¹ Amazon deducts a commission (or "referral fee") from the
16 price of each item sold on its platform, typically around 15%.¹² Optionally, and for an additional
17 fee, third-party merchants may select Fulfillment by Amazon (FBA) for Amazon to store
18 products, pack and ship orders, collect payments, and manage customer service and returns.
19 Many third-party merchants enroll in FBA because it costs less to have Amazon handle these
20 aspects of the business.¹³ Third-party merchants that enroll in FBA qualify for Amazon Prime
21 and free-shipping-eligible orders; other third-party merchants that want the benefit of Amazon
22 Prime must join a waitlist for Seller Fulfilled Prime, which commits third-party merchants to

23 ¹⁰ Amazon Services Registration Page, https://services.amazon.com/semlanding.html?ref=pd_sl_2thvswwc79_b&hvdev=c&ld=SEUSSOABING-B20000SCD&hvadid=78615157546872&hvqmt=p&tag=mh0b-20&hvbmt=bb.

24 ¹¹ Leanna Zeibak, *7 Steps to Winning the Amazon Buy Box in 2019*, Tinuiti (Aug. 14, 2018),
25 <https://tinuiti.com/blog/amazon/win-amazon-buy-box/>.

26 ¹² David Hamrick, *Amazon FBA Fees, How They Work, and How to Profit as a Seller*, Jungle Scout (Feb. 7,
2020), <https://www.junglescout.com/blog/amazon-fba-fees/>.

27 ¹³ *Id.*

1 fulfilling orders with two-day deliveries at no additional charge to Prime customers.¹⁴ Accepting
 2 FBA services also greatly increases the likelihood that the third-party merchants' products will
 3 be selected for the coveted Amazon Buy Box, which makes products most visible on the
 4 product-detail page and the easiest for consumers to purchase.¹⁵

5 31. Referral fees are not paid by third-party merchants to Amazon up-front; instead
 6 Amazon deducts them from customers' payments before Amazon remits payments to the third-
 7 party merchants.

8 32. The overwhelming majority of third-party merchants selling on Amazon's
 9 platform also sell on competing platforms, including their own websites and the platforms
 10 offered by companies like eBay, Walmart, and Wayfair. Amazon imposes fees for the use of its
 11 platform that are substantially higher than the fees charged by other platforms—especially third-
 12 party merchants' own websites, which have no fees at all. In a competitive market, third-party
 13 merchants would charge a total price on other platforms that is lower than the price charged on
 14 Amazon's platform, because the other platforms take a lower fee. However, Amazon uses its
 15 market power to prohibit this form of price competition.

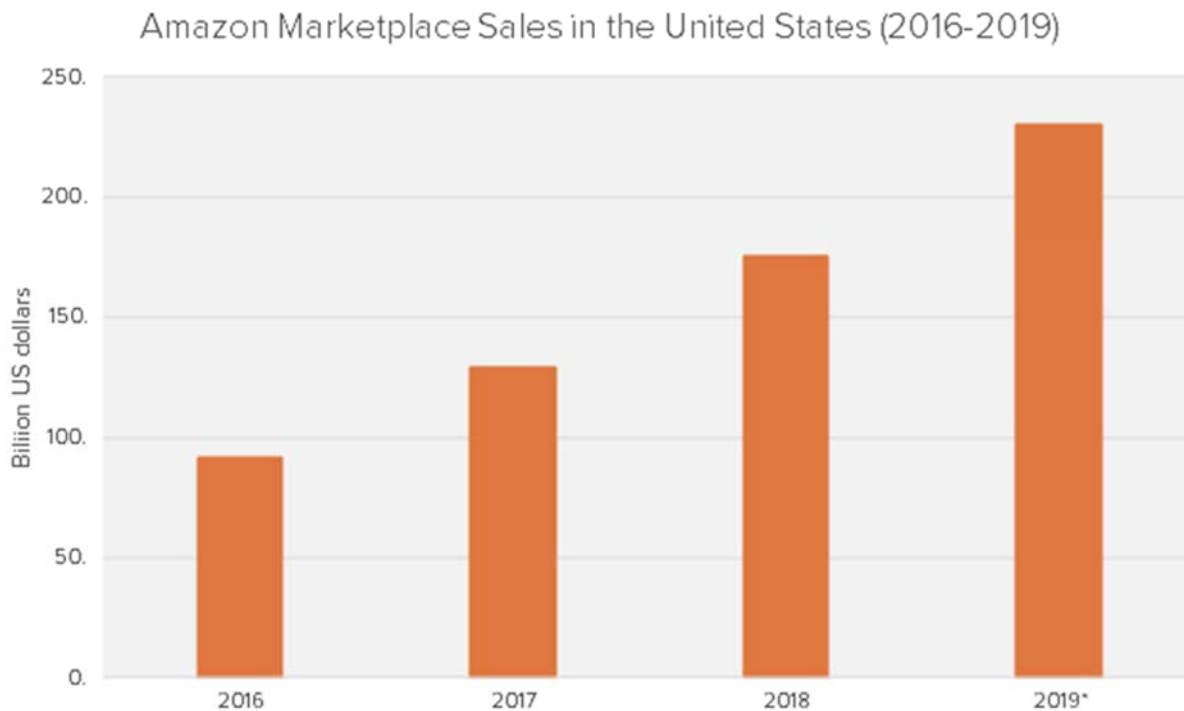
16 33. Every third-party merchant that registers to sell products on Amazon's platform
 17 "agrees to the terms of the Amazon Services Business Solutions Agreement (BSA) and the
 18 policies incorporated in that agreement." The BSA establishes rules for setting prices on
 19 Amazon's platform.

20 34. Amazon has monopoly power in the online retail sales market in the United
 21 States. As of 2018, 50% of online retail sales in the United States took place on Amazon's
 22
 23
 24

25 ¹⁴ Reach hundreds of millions of Amazon customers worldwide-fast, Amazon Seller Central,
 26 <https://sellercentral.amazon.com/>; Sell products with the Prime badge directly from your warehouse, Amazon Seller
 27 Central, <https://services.amazon.com/services/seller-fulfilledprime.html>.

28 ¹⁵ *Supra* Zeibak.

platform.¹⁶ Amazon's market share has been increasing over the past five years, as shown by the growth of its sales.¹⁷



35. Aided by its anticompetitive conduct, Amazon has increased its market share in the online retail sales to “65% to 70% of all U.S. online marketplace sales.”¹⁸

36. Those increases have largely been driven by third-party merchant sales, which account for the majority of sales on Amazon's platform.¹⁹

¹⁶ *Amazon Now Has Nearly 50% of US Ecommerce Market*, Emarketer (Jul. 16, 2018), <https://www.emarketer.com/content/amazon-now-has-nearly-50-of-us-ecommerce-market>.

¹⁷ J. Clement, *U.S. Amazon marketplace sales 2016-2019*, Statista, Jun 12, 2019, <https://www.statista.com/statistics/882919/amazon-marketplace-sales-usa/>.

¹⁸ House Report at 255.

¹⁹ Laureen Thomas & Courtney Reagan, *Watch out, retailers. This is just how big Amazon is becoming*, CNBC, www.cnbc.com/2018/07/12/amazon-to-take-almost-50-percent-of-us-e-commerce-market-by-years-end.html.



37. Amazon's monopoly power is further confirmed by its power to control the prices of a vast number of goods offered for sale in the U.S. online retail sales market.

38. Amazon has even greater monopoly power in the market for online retail sales *platforms*. In light of the volume of sales that takes place on Amazon's platform, the overwhelming majority of retailers have no choice but to list their products on Amazon's platform. Amazon's power is reinforced by the fact that Amazon's platform provides access to Amazon's 147 million Prime members in the United States.²⁰ To put that into perspective, more Americans have Amazon Prime accounts than go to church regularly or have a landline phone.²¹ Prime membership is a paid subscription service for Amazon's retail customers that entitles them to several benefits, including free two-day shipping on Prime products. According to a survey, an estimated 20% of Amazon Prime members shopped on Amazon a few times per week, and 7% did so almost daily. Prime members in the United States spend an average of \$1,400 per year on Amazon's platform. Another survey found that an astonishing 96% of all

²⁰ <https://www.digitalcommerce360.com/article/amazon-prime-membership/#:~:text=Amazon%20has%20147%20million%20Prime,to%20shareholders%20published%20April%2015.>

²¹ Margot Whitney, Complete Beginner's Guide to Advertising on Amazon, Wordstream (Aug. 27, 2019),

1 Prime members are more likely to buy products from Amazon’s platform than any other online
2 retail sales platform.²²

3 39. Amazon’s market power is further entrenched by the powerful network effects
4 that shape online retail sales platforms. A network effect is the phenomenon by which the value
5 or utility a user derives from a good or service depends on the number of users of the same good
6 or service. An online retail sales platform is not valuable to consumers if no retailers list their
7 products on it, and it is not valuable to retailers if no consumers shop there. Conversely,
8 Amazon’s tremendous advantage in the number of retailers who list their products on the
9 Amazon platform draws *hundreds of millions* of consumers to the platform, and this massive
10 audience in turn compels retailers to list products there. As noted, third-party merchants
11 consistently report that market realities “force[them] to be on Amazon” and that they “don’t
12 have a choice but to sell through Amazon.” *Id.* at 87, 270.

13 40. For example, Molson Hart, who sells toys on Amazon reports: “Were we to be
14 suspended from selling on Amazon.com, it would probably take 3–6 months before we’d be
15 bankrupt. We are not alone. This is typical for small to medium sized businesses which sell
16 online today. In fact, most companies like our own, would probably go bust even faster.”

17 41. Amazon also has even greater monopoly power in specific submarkets of the
18 online retail sales market. For example, Amazon currently enjoys an overwhelming share of the
19 online retail sales market in the following categories of goods: home improvement tools (93%);
20 men’s athletic shoes (74%), skin care (91%), batteries (97%), golf (92%), cleaning supplies
21 (88%), and kitchen and dining (94%).²³

22
23
24
25 ²² Kiri Masters, *89% Of Consumers Are More Likely To Buy Products From Amazon Than Other E-Commerce*
26 *Sites: Study*, Forbes (Mar. 20, 2019), <https://www.forbes.com/sites/kirimasters/2019/03/20/study-89-of-consumers-are-more-likely-to-buy-products-from-amazon-than-other-e-commerce-sites/#452623b04af1>.

27 ²³ Amy Gresenhues, *Amazon Owns More Than 90% Market Share Across 5 Different Product Categories*
28 *[Report]*, Marketing Land (May 31, 2018), <https://marketingland.com/amazon-owns-more-than-90-market-share-across-5-different-productcategories-report-241135>.

B. Amazon Imposes Most Favored Nation Requirements On Third-Party Merchants.

42. Amazon has achieved and maintained market dominance through the contractual controls it exercises over the prices its third-party merchants can offer on competing online retail sales platforms.

43. Before March 2019, Amazon required its third-party merchants to agree to Amazon's "Price Parity Clause." The Price Parity Clause (also known as a "Most Favored Nations" clause or "MFN") explicitly prohibited third-party merchants from offering consumers lower prices on any alternative online platform including their own websites.

44. Amazon's Price Parity Clause restricted and suppressed price competition in two ways.

45. *First*, the Price Parity Clause prohibited third-party merchants from lowering their prices on other online retail sales platforms. But for Amazon's MFN clause, Amazon's higher fees would result in consumers paying a higher overall price on Amazon's platform than on competing platforms. Competitive pressure would then have forced Amazon to lower its fees. By eliminating price competition across platforms, Amazon protected its ability to charge surpracompetitive fees for the use of its platform, keeping prices high on its platform and, therefore, across all online retail sales platforms.

46. *Second*, Amazon eliminated horizontal price competition between its own goods and the directly competing goods of the third-party merchants that would otherwise have been sold at lower prices, not only on competing online platforms and the merchants' websites, but also on Amazon's own platform. Without the Price Parity Clause, Amazon would have had to offer lower prices for its own goods to compete with the lower-priced third-party-merchant goods.

47. Economic literature teaches that MFN clauses typically result in noncompetitive fees, because they discourage the entry of new platforms that would otherwise challenge the

incumbents by offering sellers lower fees.²⁴ Walmart, Amazon's closest direct competitor, charges referral fees similar to Amazon's across the same product categories. This synchronization of referral fees between Amazon and Walmart suggests that the higher-price structure imposed by Amazon has spread to competing online marketplaces:

Item Category	Amazon	Walmart
Men's athletic shoes (Shoes)	15% < \$75.00, 18% > \$75.00	15%
Kitchen and Dining	15%	15%
Home Improvement Tools	15%, 12% for base equipment	15%
Apparel and Accessories	17%	15%
Electronics	8%	8%
Beauty Products	8% < \$10.00, 15% > \$10.00	15%
Books	15%	15%
Furniture & Décor	15% < \$200.00, 10% > \$200.00	15%
Grocery & Gourmet Food	8% < \$15.00, 15% > \$15.00	15%
Personal Computers	6%	6%
Camera and Photos	8%	8%
Automotive & Powersports	12%	12%
Baby Products	8% < \$10.00, 15% > \$10.00	15%
Jewelry and Watches	20% < \$250.00, 5% > \$250.00	20%
Toys and Games	15%	15%
Everything Else	15%	15%

48. Market analyst Simeon Siegel notes that “although every unit sold through 3P . . . comes at lower reported revenue[,] . . . the collected fees flow through at much higher margin rates,” meaning that Amazon's gross margin continues to grow even when selling fewer of its own goods.²⁵ For example, Amazon generated \$43 billion in third-party merchant service revenues in 2018, which accounted for the second-largest revenue segment of the online retail platform, after Amazon's own retail product sales.²⁶

²⁴ Andre Boik and Kenneth S. Corts, The Effects of Platform Most-Favored-Nation Clauses on Competition and Entry, *The Journal of Law and Economics* 59, no. 1 (February 2016): 105-134; UK Office of Fair Trading, Can “Fair” Prices Be Unfair? A Review of Price Relationship Agreements, Paper No. 1438 (Sept. 2012), https://www.jura.uniwuertzburg.de/fileadmin/02140600/Aktuelles/2012-10-24_-brit._Kartellbehoerde/OFT1438.pdf.

²⁵ *Supra* Howland.

²⁶ J. Clement, *Percentage of paid units sold by third-party sellers on Amazon platform as of 4th quarter 2019*, Statista (Jan. 31, 2020), <https://www.statista.com/statistics/259782/third-partyseller-share-of-amazon-platform/>.

49. Collectively, the third-party merchant fees Amazon charges are substantial and built into the prices its third-party merchants charge their customers for products purchased on Amazon's platform. Because Amazon's pricing policies do not permit its third-party merchants to sell at lower prices on other platforms, these fees are also baked into the prices they offer on other platforms, i.e., throughout the online retail sales market.

50. For example, retailer Molson Hart reports that a \$150 item sold on Amazon would make his company the same profit as an item sold for approximately \$40 less on his company website:

We designed, manufactured, imported, stored, shipped the item, and then we did customer service. Amazon hosted some images, swiped a credit card, and got \$40 [for a \$150 toy].

This is the core problem. Were it not for Amazon, this item would be \$40 cheaper. And this is how Amazon's dominance of the industry hurts consumers.²⁷

51. This is a direct consequence of Amazon's price policies for its third-party merchants, i.e., its former MFN clause, the Price Parity Clause, and its current, nearly identical Fair Pricing Policy. And these policies are not merely theoretical but rather have been aggressively enforced. To ensure compliance with the MFN clause, Amazon's "automated system continually check[ed] and inform[ed] the seller within 15 minutes if a violation has occurred."²⁸ If a third-party merchant was found in violation, it received a policy warning in the seller's central account.²⁹ Violations could result in removal of the third-party merchant's product listing or suspension of the merchant's account.³⁰ It was reported that "Amazon even checks [the third-party merchant's] listings for similar products that are differently described, by

²⁷ *Supra* Hart.

²⁸ Rupert Heather, The Little-Known Amazon Pricing Rule that Would Burn Your Business, Xsellco, <https://www.xsellco.com/resources/amazon-pricing-rule-burn-business/>.

²⁹ *Id.*

³⁰ Sarah Sayed, 5 Pricing Do's and Don'ts on Amazon and Walmart Marketplace, Worldfirst Blog (Apr. 11, 2018), <https://www.worldfirst.com/us/blog/selling-online/5-pricing-dos-dontsamazon-walmart-marketplace/>. Amazon's contracts with its third-party merchants are confidential. Plaintiffs therefore rely on publicly available third-party sources for their content.

color or size, for example. In other words, there's no hiding place."³¹ As one advisor phrased it, "[I]f you get caught, Amazon won't hold back from enforcing penalties or suspensions."³² Jarvin Karnani, who has been selling on Amazon Marketplace for two years, told the FTC, "[I]f Amazon suspends you, it's like a death knell . . . [W]hen Amazon shuts you off, they sit on your money for 90 days and there's nothing you can do."³³ To ensure that they are in compliance with Amazon's price policies, some third-party merchants have come to rely on an external service to replicate their prices across multiple marketplaces.³⁴

52. "A staggering number (82%) of consumers cited price as a very important factor when buying a product on Amazon."³⁵ But Amazon's MFN clause had the effect of reducing price competition. Third-party merchants, who would have sold their products for less, including on their own websites (e.g., by avoiding Amazon's estimated 15% referral fee),³⁶ were prevented from selling at lower prices.³⁷

53. Amazon came under fire for its MFN clause in December 2018, when Senator Blumenthal called for an FTC investigation of the practice.³⁸ Years earlier, Amazon withdrew this very practice in Europe under pressure from British and German regulators.³⁹ In response to the Blumenthal letter, Amazon also quietly withdrew its MFN clause in the United States in March of last year.⁴⁰ At the time, Dani Nadel, president of Feedvisor, a company that advises

³¹ *Supra* Heather.

³² *Supra* Sayed.

³³ *Supra* Soper & Brody.

³⁴ *Supra* Heather.

³⁵ Catie Grasso, *Amazon Pricing Strategy: How Much Should You Sell a Product For?*, Feedvisor (Jan. 31, 2020), <https://feedvisor.com/resources/marketplace-fees-policies/amazonpricing-strategy/>.

³⁶ What it costs to sell on Amazon in 2018, Xsellco, <https://www.xsellco.com/resources/amazon-seller-fees-2018/>; *supra* Hart ("Amazon takes a 15% commission on every product we sell on their website. We don't have this fee when we sell toys on our own website, so we could sell our products for 15% less and make roughly the same amount of money as we do on Amazon.").

³⁷ Letter from Senator Richard Blumenthal to Josephs Simons, Federal Trade Commission Chair (Dec. 19, 2018), <https://www.blumenthal.senate.gov/imo/media/doc/12.19.18%20-%20DOJ%20-%20Price%20Parity.pdf>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Catherine Shu, *Amazon Reportedly Nixes Its Price Parity Requirement for Third-Party Sellers in the U.S.*, Tech Crunch (Mar. 11, 2019), <https://techcrunch.com/2019/03/11/amazonreportedly-nixes-its-price-parity-requirement-for-third-party-sellers-in-the-u-s/>.

1 Amazon third-party merchants, expected it to be a watershed moment that would lead “the
2 greater e-commerce landscape” to be “much more dynamic.”⁴¹ Likewise, when he learned that
3 Amazon was revoking its MFN clause, David Simnick, co-founder and CEO of Soapbox, a
4 Washington, D.C.-based soap and shampoo maker that sells on Amazon, reported: “I almost did
5 a back flip in the hotel gym.”⁴²

6 54. But the watershed moment never came. Instead, Amazon continues to punish
7 retailers, who price products lower on other sites.⁴³ While Amazon withdrew its MFN clause, it
8 continues to enforce its Fair Pricing Policy, which has the same effect as its former MFN
9 clause.⁴⁴ Whereas the MFN clause specifically prohibited third-party merchants from offering
10 cheaper deals through competing online retail sales platforms, the Fair Pricing Policy prohibits
11 pricing that “harms consumer trust,” which Amazon then interprets to impose the same
12 requirements. Failure to comply with this interpretation results in stiff penalties, such as
13 Amazon removing the “Buy Box” from the relevant product page, suspending shipping options,
14 and even terminating the third-party merchant’s selling privileges.⁴⁵

15 55. The “Buy Box” is the white box on the right side of the product details page
16 where shoppers can click “Add to Cart” or “Buy Now.” It is a critical listing benefit for third-
17 party merchants: Buy Box products are the most visible to consumers and the easiest for them to
18 purchase. Over 80% of Amazon purchases made on desktops are done via the Buy Box, and due
19 to the smaller screen size of mobile devices, an even higher percentage of mobile Amazon
20 purchases are made through the Buy Box.⁴⁶

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24 ⁴¹ *Supra* Howland.

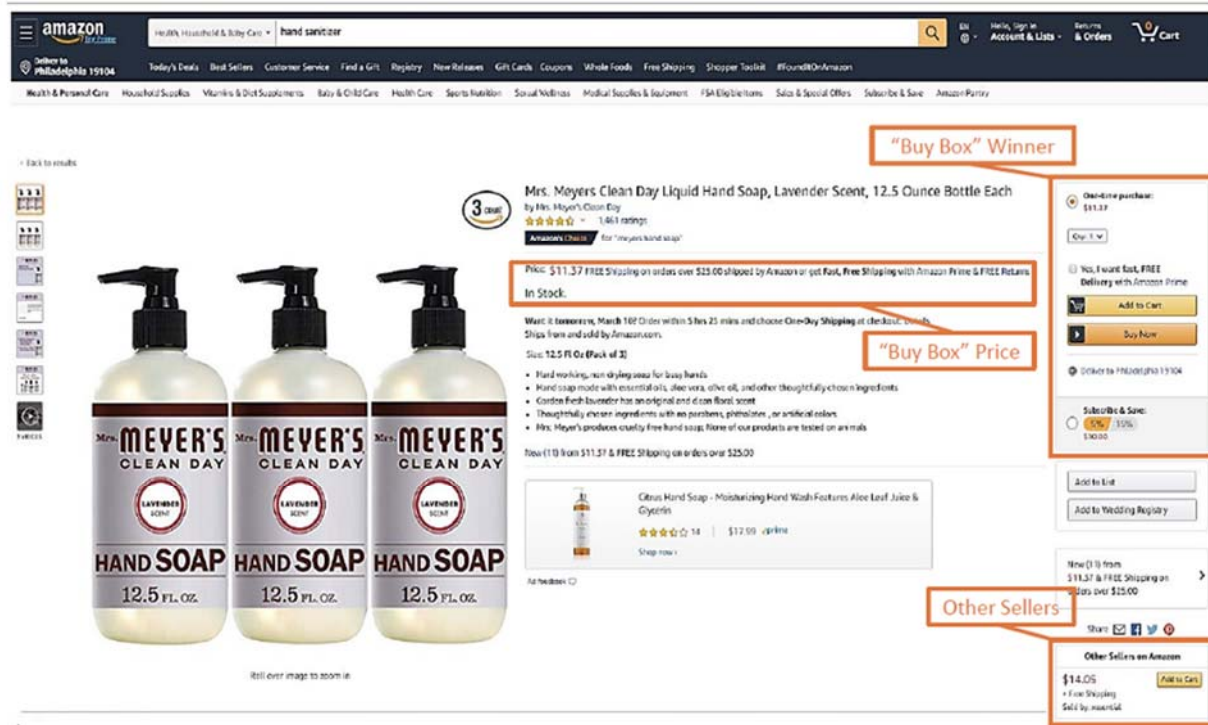
25 ⁴² *Supra* Gonzalez.

26 ⁴³ *Supra* Hart; *supra* Gonzalez.

27 ⁴⁴ *Supra* Gonzalez.

28 ⁴⁵ *Id.*

⁴⁶ Conor Bond, *Why You Need the Amazon Buy Box and How to Get It*, Ecommerce Strategy,
<https://www.wordstream.com/blog/ws/2018/10/03/amazon-buy-box>; Meyers Soap entry on Amazon,
www.amazon.com/Mrs-Meyers-Clean-Day-Lavender/dp/B01N1N6FMZ (retrieved March 9, 2020).



56. Eligibility for the Buy Box depends on a number of factors, including the third-party merchant's reputation, price, efficiency, and whether the merchant is selling its product for a lower price through competing online retail sales platforms.⁴⁷ When users click the "Add to Cart" button on Amazon's platform, they are buying from one merchant and one merchant only—the Buy Box winner.⁴⁸ Similarly, when a user selects the "Buy Now" button, that will also lead to the Buy Box owner.⁴⁹ Over 90% of sales occur using the Buy Box.⁵⁰

57. Having the Buy Box provides tremendous value to third-party merchants. For example, retailer David Simnick reports that his sales plunge as much as 40 or 50 percent in a single day when his listings lose the Buy Box because of pricing products for less on alternative platforms. He is able to reclaim the Buy Box only if he changes product pricing so that he is no longer offering a lower price on other online retail platforms than on Amazon.⁵¹ Despite the

⁴⁷ Leanna Zeibak, *7 steps to Winning the Amazon Buy Box in 2019*, Tinuiti (Aug. 14, 2018), <https://tinuiti.com/blog/amazon/win-amazon-buy-box/>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Supra* Gonzalez.

1 official withdrawal of Amazon's MFN clause, Amazon continues to strip his listing of the Buy
2 Box if products are sold elsewhere for even \$1 less than on Amazon.⁵²

3 58. Molson Hart, whose company Viahart sells toys online, says that 98% of its sales
4 come from Amazon's platform and that other platforms like eBay and Walmart account for less
5 than 2% of his company's revenue. *Supra* Soper & Brody. He also found that even after
6 Amazon officially ended its MFN clause, it continued to punish third-party merchants who list
7 prices on other websites for less than the price on Amazon: "If we sell our products for less on
8 channels outside Amazon and Amazon detects this, our products will not appear as prominently
9 in search and, if you do find them, they will lose their prime check mark and with that, their
10 sales."⁵³

11 59. Amazon is not just an online retailer, it is also a data aggregator. It compiles a
12 massive set of consumer data based on its retail customers' shopping information, including
13 minutiae such as how long a consumer considers a product.⁵⁴ Former Amazon employees have
14 reported that the internal data Amazon compiles is much more sophisticated than the
15 information available in the public domain, or any third-party tools built for third-party
16 merchants.⁵⁵ This massive data collection has helped Amazon evolve into a giant among online
17 retail stores by collecting, storing, processing, and analyzing personal information from its retail
18 customers to determine how they are spending their money.⁵⁶ This data advantage also allows it
19 to extract maximum profit from consumers by setting the price of its products and platform fees
20 to leverage its market power.

21
22 ⁵² *Id.*

23 ⁵³ *Supra* Hart.

24 ⁵⁴ Amazon Privacy Notice,
https://www.amazon.com/gp/help/customer/display.html?nodeId=201909010#GUID-1B2BDAD4-7ACF-4D7A-8608-CBA6EA897FD3__SECTION_87C837F9CCD84769B4AE2BEB14AF4F01.

25 ⁵⁵ Krystal Hu, *Revealed: How Amazon uses third-party seller data to build a private label juggernaut*, Yahoo
Finance (Sept. 27, 2019).

26 ⁵⁶ Jennifer Wills, *7 Ways Amazon Uses Big Data to Stalk You (AMZN)*, Investopedia (Oct. 20, 2018),
27 https://www.amazon.com/gp/help/customer/display.html?nodeId=201909010#GUID-1B2BDAD4-7ACF-4D7A-8608-CBA6EA897FD3__SECTION_87C837F9CCD84769B4AE2BEB14AF4F01.

60. Amazon regularly uses its massive data aggregations capabilities to monitor the prices that other online retail sales platforms offered to U.S. customers both by its external competitors and its third-party merchants,⁵⁷ and it regularly enforces its MFN Clause, often within 15 minutes of discovering a price differential. The enforcement and threat of enforcement has regularly prevented its third-party merchants from offering lower prices through competing platforms.⁵⁸

C. Amazon's Pricing Policies Restrain Price Competition and Cause Consumers to Pay More.

61. Amazon's price policies have an anticompetitive effect because they eliminate price competition from third-party merchants across the U.S. online retail sales market. Selling on Amazon Marketplace is not cheap, so to make up for the fees, third-party merchants must increase prices on Amazon's platform.⁵⁹ And Amazon's price policies require third-party merchants to sell at these elevated prices on other online retail sales platforms, as well, which results in reduced price competition and higher online prices for consumers.

62. Absent Amazon's anticompetitive price policies, third-party merchants would set lower prices on platforms with lower fees than Amazon's. Price is highly material factor for consumers shopping on online retail platforms. Therefore, Amazon would face significant competitive pressure if retailers were allowed to consistently offer lower prices on competing platforms. That competitive pressure would force Amazon to lower the referral fees it charges, which are currently set higher than the market would have allowed in the presence of full competition. Had Amazon charged a competitive referral fee rather than a supracompetitive referral fee, consumers would have paid less to purchase products from third-party merchants on Amazon's platform. Market forces would also have forced Amazon to lower the prices it charges for its own products in response to the lower prices being charged by competing retailers both on and off the Amazon platform.

⁵⁷ *Supra* Sayed, *Amazon Pricing Strategy: How Much Should You Sell a Product For?*.

⁵⁸ *Supra* Heather.

⁵⁹ *See, e.g., supra* Hart.

63. Consumers who purchased products offered by Amazon's third-party merchants on other platforms were also injured because they purchased the products at prices artificially inflated by Amazon's anticompetitive price policies. For example, a customer, who purchased a \$150 toy on Viahart.com (the same price concurrently offered on Amazon's platform) paid approximately \$40 more for the toy than if the third-party merchant had not had to abide by Amazon's price policies requiring price parity; the third-party merchant could have sold the product for \$40 less on its own website while making the same profit.⁶⁰ Amazon's Fair Pricing Policy has a broad reach, encompassing virtually all consumer products. Consumers who make purchases on competing online retail sales platforms of any of the hundreds of millions of products concurrently offered on Amazon's platform are likely to be injured in the future by Amazon's current Fair Pricing Policy.

D. Government Authorities Have Repeatedly Concluded That Amazon Has Harmed Competition Through the Use of Most Favored Nation Pricing Policies.

64. Last summer, the Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the Judiciary conducted an extensive investigation of Amazon's pricing policies governing third-party merchants. The resulting House Report concluded that "Amazon has a history of using MFN clauses to ensure that none of its suppliers or third-party merchants can collaborate with an existing or potential competitor to make lower-priced or innovative product offerings available to consumers."

65. The House Report rejected Amazon's claims that it competes with retailers outside the online retail sales market, explaining that "[t]his approach is inconsistent with evidence gathered by Subcommittee staff, conventional antitrust analysis of relevant product markets, and common sense."⁶¹ The House Report further noted the FTC's recent conclusion that a "relevant market may be divided by channel of sale, resulting in separate markets for brick-and-mortar sales and online sales."⁶²

⁶⁰ *Id.*

⁶¹ *Id.* at 255.

⁶² *Id.*

66. Referring to the online retail sales market, the House Report further concluded that “Amazon functions as a gatekeeper for ecommerce.”⁶³ Further, “Amazon has monopoly power” over most third-party merchants who feel they “cannot turn to alternative marketplaces, regardless of how much Amazon may increase their costs of doing business or how badly they are treated.”⁶⁴

67. The House Report further found that “Amazon also enjoys significant market power over online consumers” that “is durable and unlikely to erode in the foreseeable future.”⁶⁵ This durable market power reflects significant barriers to entry that include: “(1) network effects, which make it difficult for another marketplace to achieve a comparable number of buyers and sellers; (2) switching costs associated with consumers shopping outside of the Amazon ecosystem; and (3) the steep costs of building a logistics network comparable in size and scope to Amazon’s massive international footprint in fulfillment and delivery.”⁶⁶

68. The German antitrust authority—the Bundeskartellamt—has already found that Amazon’s PMFN clause harms consumers with anticompetitive overcharges.

69. In Germany, Amazon was a less commanding market leader, with a relatively low 30-40% share of the market for the online sales of goods. Nevertheless, the German antitrust authority took action against Amazon for the PMFN clause at issue here: “the so-called price parity clause,” which “largely prevented sellers on Amazon’s Marketplace platform from offering their goods elsewhere online at a lower price,” whether on “other e-commerce platforms” or on their “own online shops.”

70. Upon investigation, the German authority concluded that “Amazon and the third-party retailers are direct competitors” in e-commerce, that “[t]he price parity clause is a hardcore restriction which is not indispensable for Marketplace efficiencies and does not allow consumers a fair share of the resulting benefit,” and that “[t]he agreement of a price parity

⁶³ *Id.* at 256.

⁶⁴ *Id.*

⁶⁵ *Id.* at 260.

⁶⁶ *Id.*

1 clause constitutes horizontal price-fixing.” The German authority further concluded that the
 2 scope of that horizontal price-fixing agreement was market-wide: because “[a] general
 3 competitive relationship exists between Amazon and the third-party sellers in the retail markets
 4 in all product categories,” “the price parity clause is a hardcore restriction in all product
 5 categories.”

6 71. The German authority also found that Amazon’s PMFN clause had the stark
 7 anticompetitive effect economic literature predicts: reduced competition and higher prices.
 8 Because Amazon’s PMFN restriction ensures a uniform all-in price to the end consumer, the
 9 “[p]rice parity clauses thus act as barriers to market entry for new competitors and hinder the
 10 expansion of existing competitors in the market” by “neutrali[zing]” the “major competitive
 11 parameter – the fees for platform services – . . . more favourable fees cannot be translated into
 12 more favourable prices for final customers.” The inevitable result is higher prices. “According
 13 to a poll of 2,500 online retailers carried out by the Bundeskartellamt, [the price parity clause]
 14 has also resulted in significant price increases to e-commerce.”

15 72. As a result of the German authority’s findings, as well as coordinated efforts by
 16 other EU competition authorities, Amazon ultimately abandoned its PMFN clause on an EU-
 17 wide basis.

18 73. Last summer, the Washington Post reported that the FTC planned to investigate
 19 Amazon as part of a broad investigation into the large technology companies.⁶⁷ This followed an
 20 earlier announcement that the FTC had established a special task force to monitor the big tech
 21 companies and to investigate “any potential anticompetitive conduct in those markets, and tak[e]
 22 enforcement actions when warranted.”⁶⁸ According to Gene Kimmelman, the president of
 23 Public Knowledge, a Washington-based consumer advocacy group: “This should be a wake-up
 24

25 ⁶⁷ Tony Romm, *Amazon could face heightened antitrust scrutiny under a new agreement between U.S.*
 26 *regulators*, Wash. Post (Jun. 1, 2019) [https://www.washingtonpost.com/technology/2019/06/02/amazon-could-face-](https://www.washingtonpost.com/technology/2019/06/02/amazon-could-face-heightenedantitrust-scrutiny-under-new-agreement-between-us-regulators/)
 27 [heightenedantitrust-scrutiny-under-new-agreement-between-us-regulators/](https://www.washingtonpost.com/technology/2019/06/02/amazon-could-face-heightenedantitrust-scrutiny-under-new-agreement-between-us-regulators/).

28 ⁶⁸ *Id.*

1 call to both Google and Amazon to behave themselves because it at least shows that the Justice
2 Department and FTC are thinking about them.”⁶⁹

3 74. Vox reported that the FTC started questioning some of Amazon’s competitors
4 last summer about its business practices, according to someone briefed on the discussions.⁷⁰

5 75. Bloomberg reported that FTC investigators began interviewing Amazon’s third-
6 party merchants last fall as part of a sweeping probe to determine whether Amazon is using its
7 market power to hurt competition.⁷¹ Reportedly, several attorneys and an economist have been
8 conducting interviews that typically last about 90 minutes.⁷² According to Michael Kades, who
9 spent 20 years at the FTC, the length of the interviews and the manpower devoted to examining
10 Amazon point to a serious inquiry rather than investigators merely responding to complaints and
11 going through the motions: “Early in an investigation, that’s a sign of staff doing a serious job,”
12 Kades said. “They’re spending lots of time with witnesses and trying to really understand what
13 they’re saying.”⁷³ Reportedly, regulators are skeptical that shoppers and suppliers have real
14 alternatives to Amazon.⁷⁴

15 76. Jennifer Rie, an analyst at Bloomberg Intelligence who specializes in antitrust
16 litigation, offered the opinion that FTC investigators are “in a background phase,” when they are
17 “trying to learn as much as they can about the industry from people who aren’t the target of their
18 investigation.”⁷⁵

19 77. Diana Moss, president of the American Antitrust Institute, a nonprofit that
20 advocates for aggressive antitrust enforcement says that “the central question in an inquiry like
21 this” is whether “merchants are so reliant on Amazon for sales that they are unwilling to offer
22

23 ⁶⁹ *Id.*

24 ⁷⁰ Jason Del Rey, *Amazon may soon face an antitrust probe. Here are 3 questions the FTC is asking about it*,
Vox (Jun. 4, 2019), <https://www.vox.com/recode/2019/6/4/18651694/amazon-ftc-antitrust-investigation-prime>.

25 ⁷¹ *Supra* Soper & Brody.

26 ⁷² *Id.*

27 ⁷³ *Id.*

28 ⁷⁴ *Id.*

⁷⁵ *Id.*

1 better prices on other platforms like Walmart and eBay” and whether that can hurt
2 competition.⁷⁶

3 78. The Free & Fair Markets Initiative, likewise, applauded the FTC’s efforts: “It is
4 welcome news to see that regulators are finally getting serious about taking on the unfair
5 advantage Amazon has staked out on its Platform,” said Robert B. Engel, a spokesperson for the
6 group, in a statement.⁷⁷

7 79. The Attorney General for the District of Columbia filed a sovereign enforcement
8 action against Amazon for violations of the District of Columbia Antitrust Act, D.C. Code §§
9 28-4501, *et seq.*⁷⁸ Like Plaintiffs, the Attorney General for the District of Columbia alleges that
10 Amazon restrains third-party merchants from offering their products on any other online retail
11 sales platform—including third-party merchants’ own platforms—at prices lower, or on better
12 terms, than they offer their products on Amazon’s online retail sales platform, and that this
13 conduct causes prices to consumers across the online retail sales market to be higher than they
14 would be otherwise.

15 VI. INTERSTATE TRADE AND COMMERCE

16 80. Amazon’s activities as alleged in this complaint were within the flow of, and
17 substantially affected, interstate commerce. Amazon sells goods on its own behalf and as a
18 platform for its third-party merchants across, and without regard to, state lines.

19 VII. RELEVANT MARKETS

20 81. Amazon has monopoly power in the market for online retail platforms in the
21 United States and uses this power to restrain prices, resulting in injuries to consumers. Amazon
22 further has monopoly power market in the market for online retail sales in the United States, as
23 well as the following submarkets of the online retail sales market:

24 (a) home improvement tools,

25 ⁷⁶ *Id.*

26 ⁷⁷ Ben Fox Rubin, *FTC investigation into Amazon reportedly gearing up*, C/net (Sept. 11, 2019),
<https://www.cnet.com/news/ftc-investigation-into-amazon-reportedly-gearing-up/>.

27 ⁷⁸ *District of Columbia v. Amazon.com, Inc.*, No. _____, Superior Court of the District of Columbia, Civil
28 Division, filed May 25, 2021).

- (b) men's athletic shoes,
- (c) skin care,
- (d) batteries,
- (e) golf,
- (f) cleaning supplies, and
- (g) kitchen and dining products (collectively the "Identified Sub-markets").

82. As multiple authorities have recognized, the online retail sales market is separate and distinct from the physical, brick-and-mortar retail sales market. The FTC has recognized that a relevant market may be divided by channel of sale resulting in separate markets for brick-and-mortar sales and online sales. The House Report concluded that the online retail sales market was a distinct market and that Amazon controlled 70% of it. House Report at 255. The U.S. Department of Commerce tracks online retail sales as a separate category, acknowledging its distinction from physical retail sales.

83. Economists agree that the "[i]nternet represents a fundamentally different environment for retailing from traditional retailing."⁷⁹ An online channel has distinct characteristics from a physical channel.⁸⁰ Yale economist Fiona Scott Morton notes that "[d]igital platforms combine economies of scale, low marginal costs, economies of scope through data and an installed base of users, network effects, multi-sidedness, and sometimes a global reach."⁸¹ The combination of these attributes "tend to generate concentrated markets, or market structures containing few firms," and, "with the addition of inertial (or 'sticky') consumers these markets feature high entry barriers which make it difficult for new firms to enter the market to create competition."⁸²

⁷⁹ Forsythe, S.M., & Shi, B. (2003). *Consumer patronage and risk perceptions in Internet shopping*. Journal of Business Research 56, 867 – 875 at 874.

⁸⁰ Katawetawaraks, C., & Wang, C. H. (2011). *Online Shopper Behavior: Influences of Online Shopping Decision*. Asian Journal of Business Research, 1(2), 66-74.

⁸¹ Testimony of Fiona M. Scott Morton, Ph.D., House Judiciary Committee (Mar. 7, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-Wstate-ScottMortonF-20190716.pdf>.

⁸² *Id.*

84. Furthermore, U.S. retailers also agree that the online retail sales market is separate from the physical, brick-and-mortar retail sales market. Only 28% of small businesses sell online.⁸³ Established large brick-and-mortar retailers, *e.g.*, Walmart, Target, and Costco, have an online presence, but focus their efforts overwhelmingly on their physical stores. For example, in 2017, ecommerce accounted for only 5.5% of revenue for Target,⁸⁴ 4% for Costco,⁸⁵ and 3% for Walmart.⁸⁶ Online retailers commonly advertise only online, whereas store retailers advertise both on and offline.⁸⁷ Unlike brick-and-mortar stores, online retailers do not have a way to take payment by cash or checks.⁸⁸ Brick-and-mortar stores typically provide customer service in-store to respond to questions about product offerings, whereas customer service for online retail sales is typically less comprehensive or effective.⁸⁹

85. Finally, U.S. consumers distinguish between online retail and brick-and-mortar retail. As a practical matter, the online retail sales market requires access, usually through a personal computer, smart phone or tablet, and most, but not all U.S. consumers have that access.⁹⁰ According to a Pew Research Center study in 2016, 64% of U.S. consumers prefer shopping in physical stores, and when purchasing something for the first time, 84% of U.S. consumers found it important to be able to ask questions about what they are buying or to buy

⁸³ Jia Wertz, *How Brick-And-Mortar Stores Can Compete With E-Commerce Giants*, Forbes, May 17, 2018, <https://www.forbes.com/sites/jiawertz/2018/05/17/how-brick-and-mortar-stores-can-compete-with-e-commerce-giants/#4be14a943cc0>.

⁸⁴ Nat Levy, *Target's digital sales grew 10X faster than in-store sales in 2018, as retailer adjusts to battle Amazon*, Geekwire, Mar. 5, 2019, <https://www.geekwire.com/2019/targets-digital-sales-grew-10x-faster-store-sales-2018-retailer-adjusts-battle-amazon/>.

⁸⁵ Trefis Team, *How Much Of Wal-Mart's Revenue Will Come From E-Commerce In 2020?*, Forbes, Nov. 27, 2017, <https://www.forbes.com/sites/greatspeculations/2017/11/27/how-much-of-wal-marts-revenue-will-come-from-e-commerce-in-2020/#454ed14359f2>.

⁸⁶ Ecommerce accounts for 4% of Costco's sales and is growing 12%, <https://www.digitalcommerce360.com/2017/03/06/e-commerce-accounts-4-costcos-sales-growing-12/>.

⁸⁷ Anna Johansson, *6 Fundamental Differences Between E-Commerce & Brick-and-Mortar Stores*, RetailNext, <https://retailnext.net/en/blog/6-fundamental-differences-between-e-commerce-brick-and-mortar-stores/>.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Aaron Smith and Monica Anderson, *Online Shopping and E-Commerce*, Pew Research Center, Dec. 19, 2016, <https://www.pewresearch.org/internet/2016/12/19/online-shopping-and-e-commerce/>.

1 from sellers they are familiar with, and 78% think it is important to be able to try the product out
2 in person, where physical stores have an advantage over ecommerce.⁹¹

3 86. Indeed, Amazon appears to concede this distinction between online retail and
4 brick-and-mortar retail. Tellingly, Amazon's MFN clauses only dictate what third-party
5 merchants can do on other *online* retail sales platforms, but do not apply to physical retail sales.

6 87. Amazon's restraints on competition directly impact each of the markets stated
7 above. Amazon harms consumers by imposing a price floor condition on its two million third-
8 party merchants that results in supracompetitive prices for goods sold on other online retail sales
9 platforms. While harming consumers and competition, Amazon itself benefits from its pricing
10 policies. By avoiding head-to-head competition from lower priced products on competing online
11 retail sales platforms, Amazon is able to prop up the supracompetitive referral fees it charges for
12 use of its platform. Amazon's price restraints also allow Amazon to prop up the prices it can
13 charge for products Amazon itself sells on its platform.

14 88. Plaintiffs seek relief on behalf of themselves and other purchasers of products on
15 Amazon's platform.

16 89. Eliminating Amazon's anticompetitive pricing policies would not lead to any
17 discernible negative effects on either third-party merchants or consumers. For example, unlike
18 credit-card transaction platforms, allowing third-party merchants to compete on price through
19 competing online retail sales platforms would not reduce the money available to pay rebates or
20 rewards to consumers because Amazon does not pay rebates or rewards to its retail customers.

21 90. Amazon's price policies are also not needed to prevent free riding from third-
22 party merchants, from whom Amazon already collects substantial fees. Nor are they needed to
23 combat free riding from consumers. Many regular Amazon customers already pay substantial
24 fees for their Prime membership, and Amazon dominates consumers' online searches of retailer
25 websites, creating an "information bottleneck" that prevents many consumers from ever
26 receiving competitive price information from other sources.

27 ⁹¹ *Id.*

1 91. Amazon can point to no legitimate considerations that countervail the propriety
2 of the monetary and injunctive relief that Plaintiffs seek.

3 **VIII. CLASS ACTION ALLEGATIONS**

4 92. Plaintiffs bring this action on behalf of themselves, and as a class action under
5 the Federal Rules of Civil Procedure, Rule 23(a), (b)(2) and (b)(3), seeking damages and
6 injunctive relief pursuant to federal law and pursuant to various state antitrust, unfair
7 competition, unjust enrichment, and consumer protection laws of the states listed below on
8 behalf of the members of the following Class:

9 All persons who on or after May 26, 2017, purchased one or more
10 products through Amazon's platform.

11 93. Excluded from the Class are the Defendant and its officers, directors,
12 management, employees, subsidiaries, or affiliates. Also excluded from the class are the district
13 judge or magistrate judge to whom this case is assigned, as well as those judges' immediate
14 family members, judicial officers and their personnel, and all governmental entities. Further
15 excluded from the class are individuals who are already pursuing antitrust claims based on
16 Amazon's MFN clause on their individual behalf in arbitration before the American Arbitration
17 Association.

18 94. The identity of all Class members are readily identifiable from information and
19 records maintained by Defendant.

20 95. **Numerosity:** Members of the Class are so numerous that joinder is
21 impracticable. Plaintiffs believe that there are more than a hundred million members of the
22 Class (if not more), geographically dispersed throughout the United States, such that joinder of
23 all class members is impracticable.

24 96. **Typicality:** Plaintiffs' claims are typical of the claims of the other Class
25 members. The factual and legal bases of Defendant's liability are the same and resulted in injury
26 to Plaintiffs and all other members of the proposed Class.

1 97. **Adequate representation:** Plaintiffs will represent and protect the interests of
 2 the proposed Class both fairly and adequately. They have retained counsel competent and
 3 experienced in complex class-action litigation. Plaintiffs have no interests that are antagonistic
 4 to those of the proposed Class, and their interests do not conflict with the interests of the
 5 proposed Class members they seek to represent.

6 98. **Commonality:** Questions of law and fact common to the members of the Class
 7 predominate over questions that may affect only individual Class members because Defendant
 8 has acted on grounds generally applicable to the Class and because Class members share a
 9 common injury. Thus, determining damages with respect to the Class as a whole is appropriate.
 10 The common applicability of the relevant facts to claims of Plaintiffs and the proposed Class are
 11 inherent in Defendant's wrongful conduct, because the overcharge injuries incurred by Plaintiffs
 12 and each member of the proposed Class arose from the same anticompetitive conduct alleged
 13 herein.

14 99. There are common questions of law and fact specific to the Class that
 15 predominate over any questions affecting individual members, including:

16 (a) Whether Defendant and its third-party merchants unlawfully contracted,
 17 combined, or conspired to unreasonably restrain trade in violation of section 1 of the Sherman
 18 Act by agreeing under Amazon's former MFN clause that third-party merchants would not sell
 19 their products to buyers through competing online retail sales platforms at a price lower than
 20 what they offered on Amazon's platform;

21 (b) Whether Defendant and its third-party merchants unlawfully contracted,
 22 combined, or conspired to unreasonably restrain trade in violation of section 1 of the Sherman
 23 Act by agreeing that third-party merchants would be penalized under Amazon's current "fair
 24 pricing" policy if they offered their products to buyers through competing online retail sales
 25 platforms at a lower price than what they offered on Amazon's platform;

(c) Whether Defendant has unlawfully monopolized, or attempted to monopolize, the U.S. online retail sales market, including by way of the contractual terms, policies, practices, mandates, and restraints described herein;

(d) Alternatively, whether Defendant has unlawfully monopolized the Identified Submarkets within the U.S. online retail sales market, i.e., U.S. online retail sales of home improvement tools, men's athletic shoes, skin care, batteries, golf, cleaning supplies, and kitchen and dining products;

(e) Whether competition in the U.S. online retail sales market or any of the Identified Submarkets has been restrained and harmed by Amazon's monopolization, or attempted monopolization, of these markets;

(f) Whether consumers and Class members have been damaged by Defendant's conduct;

(g) The amount of any damages; and

(h) The nature and scope of injunctive relief necessary to restore a competitive market.

100. **Injunctive relief:** By way of its conduct described in this complaint, Defendant has acted on grounds that apply generally to the proposed Class. Accordingly, final injunctive relief is appropriate respecting the Class as a whole.

101. **Predominance and superiority:** This proposed class action is appropriate for certification. Class proceedings on behalf of the Class members are superior to all other available methods for the fair and efficient adjudication of this controversy, given that joinder of all members is impracticable. Resolution of the Class members' claims through the class action device will present fewer management difficulties, and it will provide the benefit of a single adjudication, economies of scale, and comprehensive supervision by this Court.

IX. ANTITRUST INJURY

102. During the Class Period, Plaintiffs and Class members directly purchased products on Amazon's Platform. Because of Defendant's anticompetitive conduct, Plaintiffs and

Class members were forced to pay more for those products than they would have if Amazon had permitted its third-party merchants to engage in price competition outside Amazon's Platform. Defendant therefore has caused Plaintiffs and Class members to suffer overcharge damages. Because Defendant continues to enforce its anticompetitive "fair pricing" policy, Plaintiffs and Class members are reasonably likely to incur future overcharges when they purchase products on Amazon's platform. Both the actual harm and the threat of future harm are cognizable antitrust injuries directly caused by Defendant's violations of federal antitrust laws, including its anticompetitive agreement with its third-party merchants, its monopolization, or its attempted monopolization of the relevant markets, as alleged herein. The full amount of such overcharge damages will be calculated after discovery and upon proof at trial.

X. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF THE SHERMAN ACT (15 U.S.C. § 1) *PER SE*

103. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

104. Plaintiffs bring this federal law claim on their own behalf and on behalf of each member of the proposed Class described above.

105. Defendant's third-party merchants are its direct competitors in the online retail sales market in the United States. As a participant in the online retail sales market, Defendant directly offers for sale a broad range of goods on Amazon's Platform. On information and belief, all products offered by third-party merchants on Amazon's Platform are reasonably interchangeable with one or more products that Amazon directly sells on its Platform, such that there is cross-elasticity of demand between Defendant's products and the products that its third-party merchants offer on Amazon's Platform. Stated otherwise, all the products sold by third-party merchants on Amazon's Platform compete with one or more of Amazon's own products that it also sells on its Platform.

1 106. The products sold by third-party merchants are therefore reasonably
2 interchangeable with products sold directly by Defendant on Amazon's Platform, such that there
3 is cross-elasticity of demand between Defendant's products and the products of third-party
4 merchants.

5 107. Because Defendant has engaged in horizontal price-fixing, which is a per se
6 violation of the Sherman Act, no relevant market need be defined to establish liability under the
7 Sherman Act. To the extent a market definition is required, the relevant market is the online
8 retail sales market in the United States.

9 108. In violation of Section 1 of the Sherman Antitrust Act, Defendant entered into a
10 horizontal agreement with its two million third-party merchants on Amazon Marketplace
11 concerning the price they were allowed to sell their products in the United States. Specifically,
12 Defendant and its contractual partners unlawfully agreed under Amazon's former MFN clause
13 that third-party merchants will not offer their products to their customers in the U.S. online retail
14 sales market at a price lower than the price they offer them on Amazon's Platform, and under
15 Amazon's current Fair Pricing Policy, Amazon and its contractual partners unlawfully agree that
16 any third-party merchant, who offers its products to its customers at a price lower than the price
17 it offers them on Amazon's Platform, will be subject to severe penalties, including rendering the
18 merchant's products ineligible for Amazon's Buy Box or suspending or terminating the
19 merchant's account with Amazon. These unlawful agreements have unreasonably restrained
20 price competition among retailers for online sales of consumer goods and had the effect of
21 establishing a floor price for sales of products offered on Amazon's platform. This combination
22 is per se unlawful price-fixing.

23 109. Plaintiffs and the Class members have been injured and will continue to be
24 injured in their businesses and property by paying more for consumer products than they would
25 have paid or would pay in the future in the absence of Defendant's unlawful acts.

26 110. Plaintiffs and Class members are direct purchasers because they directly
27 purchase products on Amazon's platform and directly pay Amazon's referral fees.
28

111. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing violations alleged in this Complaint.

SECOND CAUSE OF ACTION

VIOLATION OF 15 U.S.C. § 1 (ALTERNATIVE TO *PER SE*)

112. Plaintiffs repeat and re-make every allegation above as if set forth herein in full. This Count is brought in the alternative if the agreement between Amazon and its co-conspirator, third-party merchants is determined to be a vertical price restraint and the conduct at issue is not a *per se* violation.

113. Plaintiffs bring this federal law claim on his own behalf and on behalf of each member of the proposed nationwide Class described above.

114. Defendant's MFN and "fair pricing" policy have an open and obvious adverse effect on competition. They raise prices and act as barriers to market entry for new competitors and hinder the expansion of existing competitors in the market. This is because the major competitive parameter – the fees for platform services – is neutralized by the PMFN and "fair pricing" policy, since more favorable fees cannot be translated into more favorable prices for final customers. This raises market prices and prevents competitors from establishing a greater reach.

115. Amazon's MFN and "fair pricing" have actual detrimental effects. They cause prices to be higher in each of the markets alleged above than they would have been in the absence of Amazon's price restraints. These anticompetitive agreements further exclude the entry and growth of competitor platforms in the online retail market and decrease innovation and consumer choice in the relevant markets.

116. A straightforward application of fundamental economic principles shows that the arrangements in question would have an anticompetitive effect on customers and the relevant market.

1 117. Defendant and its co-conspirator, third-party merchants did not act unilaterally or
2 independently, or in their own economic interests, when entering into the agreements. The
3 agreements, and their enforcement substantially, unreasonably, and unduly restrain trade in the
4 relevant market, and harmed Plaintiffs and the Class thereby.

5 118. Defendant is liable for the creation, maintenance, and enforcement of the
6 agreements under a “quick look” or rule of reason standard.

7 119. Defendant possesses market power. In 2018, for example, retail sales on the
8 Amazon platform represented 49% of all sales in the online retail sales market in the United
9 States. Ebay, the next largest competitor, had less than 7%. Today, Amazon controls between
10 65% and 70% of online retail sales market in the United States. That Amazon has market power
11 is evident from the power it has to raise prices above those that would be charged in a
12 competitive market.

13 120. Amazon also has unique advantages that allow it to exercise market power. It
14 controls 66% of all online product searches for first time purchases and 74% for goods
15 previously purchased. It has a much larger inventory than any of its competitors. It has a vast
16 digital advantage over its competitors, having amassed detailed consumer preferences and
17 behavior over decades from its 200 million unique monthly customers.

18 121. Amazon’s relationship with its co-conspirator, third-party merchants is further
19 evidence of its market power. It has the power to dictate and arbitrarily change the rules by
20 which its co-conspirator, third-party merchants have access to the Amazon.com platform, *e.g.*,
21 extending the amount of time business buyers have to pay its co-conspirator, third-party
22 merchants, deciding what products they can sell and whether they can participate as vendors or
23 third-party merchants, and bends the rules to give itself the advantage in the Buy Box and in the
24 sponsored advertising. Amazon charges them exorbitant fees that give Amazon a competitive
25 advantage over its co-conspirator, third-party merchants and uses their supplier information to
26 contract directly with the supplier and their customer information to decide what areas to focus
27 its retail or product developments.
28

122. There is no legitimate, pro-competitive business justification for Amazon's MFN and fair pricing agreements or any justification that outweighs their harmful effect. Even if there were some conceivable justification, the agreements are broader than necessary to achieve such a purpose.

123. Plaintiffs and members of the Class were injured in their business or property by paying higher prices for products purchased on the Amazon platform than they would have paid in the absence of Defendant's unlawful conduct.

THIRD CAUSE OF ACTION

VIOLATION OF THE SHERMAN ACT – MONOPOLIZATION (15 U.S.C. § 2)

124. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

125. Plaintiffs bring this federal law claim on their own behalf and on behalf of each member of the proposed nationwide Class described above.

126. The relevant market is the online retail sales market in the United States.

127. Defendant obtained monopoly power in the online retail sales market in the United States, as demonstrated by its power to set the prevailing prices of virtually every good offered for sale in that market.

128. Alternatively, the relevant markets are the following sub-markets, in which Defendant, inclusive of its third-party merchants, holds the following market share: home improvement tools (93%); men's athletic shoes (74%), skin care (91%), batteries (97%), golf (92%), cleaning supplies (88%), and kitchen and dining (94%).⁹²

129. Defendant obtained and exercises monopoly power in the identified sub-markets, as demonstrated by its power to set the prevailing prices of virtually every good offered for sale in each of these markets.

⁹² Amy Gresenhues, *Amazon Owns More Than 90% Market Share Across 5 Different Product Categories [Report]*, Marketing Land (May 31, 2018), <https://marketingland.com/amazon-owns-more-than-90-market-share-across-5-different-productcategories-report-241135>.

130. Amazon has gained and maintains monopoly power in the applicable markets by improper and unlawful means.

131. Defendant has willfully acquired its monopoly power in the applicable markets in part through its enforcement of its former MFN clause and its current Fair Pricing Policy. These provisions establish a price floor based on the third-party merchant's price listing on Amazon's Platform. By requiring its two million third-party merchants to apply a price floor on all other online retail sales platforms, Defendant largely immunizes these products from competitive pricing in the relevant market and causes the products on Amazon's platform to be sold at supracompetitive prices.

132. Plaintiffs and Class members are direct purchasers because they directly purchase products on Amazon's platform and directly pay Amazon's referral fees.

133. Plaintiffs and the Class members have been injured and will continue to be injured in their businesses and property by paying more for products on Amazon's platform than they would have paid or would pay in the future in the absence of Defendant's unlawful acts.

134. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing violations alleged in this Complaint.

FOURTH CAUSE OF ACTION

VIOLATION OF THE SHERMAN ACT – ATTEMPTED MONOPOLIZATION (15 U.S.C. § 2)

135. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

136. Plaintiffs bring this federal law claim on their own behalf and on behalf of each member of the proposed nationwide Class described above.

137. If Defendant does not already have a monopoly in the online retail sales market in the United States or the submarkets identified above, it has attempted to monopolize these markets.

138. Amazon's MFN clause and its current Fair Pricing Policy demonstrate Amazon's intent to control online prices of virtually every consumer good offered in the relevant market.

139. Through its enforcement of its MFN clause and its current Fair Pricing Policy, Defendant has furthered its goal of controlling prices of virtually every consumer good offered in the applicable markets.

140. There is a dangerous probability that Defendant will succeed in monopolizing the applicable markets. Defendant, inclusive of its third-party merchants, already accounts for 50% to 70% of the online retail sales market in the United States.

141. Plaintiffs and the Class members have been injured and will continue to be injured in their businesses and property by paying more for products on Amazon's platform than they would have paid or would pay in the future in the absence of Defendant's unlawful acts.

142. Plaintiffs and Class members are direct purchasers because they directly purchase products on Amazon's platform and directly pay Amazon's referral fees.

143. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing violations alleged in this Complaint.

JURY TRIAL DEMANDED

144. Plaintiffs hereby demand a trial by jury of all the claims asserted in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

A. The Court determine that this action may be maintained as a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class Representative and their counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class, once certified;

B. Adjudication that the acts alleged herein constitute unlawful restraints of trade in violation of the Sherman Act, 15 U.S.C. § 1;

C. Adjudication that the acts alleged herein constitute monopolization or attempted monopolization in violation of the Sherman Act, 15 U.S.C. § 2;

D. Adjudication that the acts alleged herein violate the state laws alleged herein;

E. Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;

F. Pre-judgment and post-judgment interest on such monetary relief;

G. Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendant as a result of the anticompetitive conduct alleged herein;

H. Equitable relief requiring that Amazon cease the abusive, unlawful, and anticompetitive practices described herein (including pursuant to federal antitrust law: *see, e.g.*, 15 U.S.C. § 26), as requested he therein;

I. The costs of bringing this suit, including reasonable attorneys' fees; and

J. All other relief to which Plaintiffs and members of the Class may be entitled at law or in equity.

DATED: May 26, 2021

Respectfully submitted,

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